plaintiffs, the defense was predicated upon a stipulation in the instrument that "This policy shall be void if the conditions or circumstances of the risk are changed without the written consent of the company." Iron shutters, attached to the windows of the premises when the policy was issued, were subsequently removed by the plaintiffs' landlord pursuant to directions from the fire department. Of this the defendants had no knowledge before the loss. They contended that, by virtue of the above clause, the policy became *ipso facto* void the moment the shutters were removed. *Held,* two judges dissenting, for the plaintiffs. *Zivitz* v. *Maryland Casualty Co.* (1st Dept. 1920) 192 App. Div. 83, 182 N. Y. Supp. 321.

It is the general attitude of the courts that insurance policies are to be construed liberally toward the insured, and strictly against the insurer, and that ambiguities will be resolved in favor of the insured. *Poskersz* v. *Philadelphia Casualty Co.* (1914) 213 N. Y. 22, 106 N. E. 749. This attitude appears to be the result of (1) a feeling that, in general, language should be construed against the user; (2) a desire to see the purpose of the insurance contract effectuated, *i. e.,* indemnity. But courts should not make new contracts for the parties so that where there is but one sense in which the terms can reasonably be taken, the policy should be interpreted accordingly. *Imperial Fire Ins. Co.* v. *Coos County* (1894) 151 U. S. 452, 14 Sup. Ct. 379; *Hatch* v. *United States Casualty Co.* (1908) 197 Mass. 101, 83 N. E. 398; *Rosenthal* v. *American Bonding Co.* (1912) 207 N. Y. 162, 100 N. E. 716. Nevertheless, courts, eager to prevent forfeitures, follow a rule of reasonable rather than liberal interpretation. *Liverpool Ins. Co.* v. *Kearney* (1901) 180 U. S. 132, 21 Sup. Ct. 326. Consequently, the border line is shadowy between cases where recoveries are allowed, under the extended application of this rule, and cases where recoveries are denied on the theory that courts will not make new contracts. In the instant case, a literal interpretation of the clause in question would avoid the policy. Going behind the language the most reasonable interpretation, it is submitted, is that the insurers intended (1) to prevent increase of risk; (2) in the event of an increase without their consent, to avoid the policy because the new risk would fairly demand a higher rate. The court seems not to have considered the intent or motive of the insurers in becoming obligated, and the court appears to have carried out the principle of interpretation in favor of the insured to an unnecessary extent.

INTOXICATING LIQUORS—PROHIBITION—TRANSFER OF TITLE.—A pharmacist was convicted of making an unlawful sale of intoxicating liquor. A statute provided that "It shall be unlawful" for a pharmacist so convicted "to sell within two years thereafter alcohol for any purpose whatsoever". Wash., Laws 1917, c. 19. Three days after this conviction the pharmacist sold his entire stock, including a quantity of intoxicating liquor. *Held,* the sale was valid and passed property in the liquor. *State* v. *Northern Pacific Ry., State* v. *Baisch* (Wash. 1920) 188 Pac. 3.

Where a statute merely regulates the traffic in liquor, it is not applicable to those transactions in which the passing of property in the liquor is merely an incidental though concomitant result of the consummation of the deal. *Ketler* v. *Murrey* (1906) 89 Wash. 579, 154 Pac. 1084; *Hagerty* v. *Tuxbury* (1902) 181 Mass. 126, 63 N. E. 333. Nor if it be merely incidental to the performance of a legal duty.

Wildermuth v. *Cole* (1889) 77 Mich. 483, 43 N. W. 889; *Williams* v. *Troop* (1863) 17 Wis. 478; *contra, Barron* v. *Arnold* (1887) 16 R. I. 22, 11 Atl. 298. But where the statute is prohibitory, the better view is that it is illegal to pass property in the liquor except as expressly provided. *National Bank* v. *Gerson* (1893) 50 Kan. 582, 32 Pac. 905; see *Conley* v. *Murdock* (1909) 106 Me. 266, 269, 76 Atl. 682; *contra, Long* v. *Holley* (1912) 177 Ala. 508, 58 So. 254; *Gignoux* v. *Bulbrick* (1884) 63 N. H. 22. The principal case is doubtless sound in view of the statute under which it was decided. At the present day, however, with the prohibitory Volstead Act in force, and not an act merely to regulate the traffic in liquor, any attempt to transfer property in liquor in an unauthorized manner should be held illegal. If the principal case, therefore, had arisen under the Volstead Act, a contrary result should have been reached.

MASTER AND SERVANT—WORKMEN'S COMPENSATION—ACTS IN AN EMERGENCY.—Two independent railroads maintained, at a distance of fifty feet, parallel tracks across a highway. Each employed a flagman to keep people off the tracks, *etc.* The plaintiff's intestate, a flagman, was killed while attempting to rescue a child on the tracks of the other railroad. *Held,* one judge dissenting, the plaintiff's act did not "arise out of and in the course of his employment" within the meaning of the Workmen's Compensation Act. *Priglise* v. *Fonda, J. & G. Ry.* (3rd Dept. 1920) 192 App. Div. 776, 183 N. Y. Supp. 414.

Where the employee of one independent contractor is killed in rescuing an employee of another independent contractor working near him in the same building, it has been held that the death arises out of and in the course of employment. *Waters* v. *Taylor Co.* (1916) 218 N. Y. 248, 112 N. E. 727. The court argued that the decedent's act was meritorious and one to be reasonably anticipated under the circumstances. The court concluded that since the Act is designed to put upon the business the financial burden arising from an injury to an employee, the employee should not be barred from compensation merely because in an emergency he stepped somewhat beyond the scope of his regular employment. The court, however, seems to overlook the fact that only those actions which are in furtherance of the business enterprise are within the purview of the Compensation Act. See *Spooner* v. *Detroit Saturday Night Co.* (1915) 187 Mich. 125, 133, 134, 153 N. W. 657; (1914) 14 Columbia Law Rev. 654; (1912) 25 Harvard Law Rev. 414-416. Thus, though in an emergency an employee may step somewhat beyond the ordinary scope of his employment, the general rule is that the disputed act must be in furtherance of the business. *Southern Surety Co.* v. *Stubbs* (Tex. 1917) 199 S. W. 343, (engineer drowned saving employer's dredge); *General Accident, etc. Corp.* v. *Evans* (Tex. 1918) 201 S. W. 705, (killed rescuing fellow servant); *Dragovich* v. *Iroquois Iron Co.* (1915) 269 Ill. 478, 109 N. E. 999, (killed rescuing fellow servant); *Rees* v. *Thomas* [1899] 1 Q. B. 1015, (killed stopping master's runaway horse). So where the employee's act is not in furtherance of the enterprise, recovery is denied. *Clark* v. *Clark* (1915) 189 Mich. 652, 155 N. W. 507, (servant rescuing master); *Mullin* v. *D. Y. Stewart & Co., Ltd.* (1908) 45 Scot. L. R. 729, (servant rescuing fellow servant who is not acting in the line of duty). In the *Waters* case, however, the court, disregarding this generally accepted distinction, held that the social policy back of the Compensation Act warranted the extension of the Act to cases of this sort.